

# PROTECTION OF PUBLIC INTEREST GUARANTEED BY ENVIRONMENTAL INSPECTION AND RELEVANT INSTITUTIONS

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## **Abstract**

*Albania's natural environment and resources are vital to its economic success and the health and well-being of its citizens. Environmental crime threatens resources on which it is heavily dependent on the pillars of the Albanian economy and acts as a major obstacle and obstacle as Albania moves towards an efficient economy with resources, employment and safe growth. The greatest challenges in today's environment do not conspire in natural disasters, but in the grave, immoral and inexperienced behavior of man to the environment and its elements. Impotence is another important element of this story that is killing us every day, though it does not seem to touch us with any expected tree, no bird that no longer has to stand, no fish that took the river's river hydroelectric power plant.... Inspection in particular, is an important part of environmental protection, because in my view it is the key to everything, based on the ever-popular popular expression "fear preserves the vineyard". The impotence of environmental crime is one of the most important advantages and methods for preserving environmental elements. Inspection in the entirety of many advantages in other instrument reports as a previously studied, well-defined, non-corroborated inspection is efficient both for the environment and economic efficiency, as it affects the ability to increase revenue publicity, transparency, flexibility, etc. Inspection today is considered to be the only pathway that affects law enforcement by all actors set out in it. It is the only tool that, having the authority to take administrative or criminal measures, directly affects the work and life of the objects subject to inspection. In this context, inspection has been successfully used to address a wide range of environmental crime, including waste disposal, water pollution and air emissions.*

**Keywords:** environment, environmental crime, inspection.

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## **1. Introduction**

Environmental crime in the Republic of Albania has for years been well formatted by the legal provisions for the prevention and punishment of the offenses of this field and the type of offenses that have emerged and appear every day with the evolution of society in general and technology in particular. However, relevant policy-making institutions, while recognizing international and national trends, are all the time involved in defining and introducing new elements as part of environmental crime. Here, we can mention the international trend related to the elimination of environmental interventions that affect climate change since these changes can indeed come from an intentional or unlawful act on a small territory of a state, but its effects stretching over many places and often across the globe. In our country, as a result of the increasing concentration of the entire economy towards tourism, we are increasingly seeing the filling of the inundated coast line in order to increase the land surface for tourism development. This not only changes the flora and fauna of the surface that is irreversibly damaged, but removes marine waters, causing flooding on the other side of the coast.

## **2. Inspection today**

Ensuring the enforcement of mandatory rules in the daily activity of businesses and individuals is one of the main obligations of the state. These rules relate to national security, public order, life, health, environment, national wealth, fair competition, fiscal discipline, etc. For this purpose, in a democratic and legal state, an inspection body is established and functioning as an organizational form of the central executive local bodies, which monitor, inspect and, where appropriate, punish cases of non-compliance with legal (legal) requirements imposed by businesses or individuals. Law No.10 433, dated 16.6.2011 "On Inspection in the Republic of Albania" 1

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defines its object which is "*This law defines the general principles of inspection, the organization of public institutions, performing inspection functions, the status of inspectors, the rules of administrative inspection proceeding and the establishment of functions of the Central Inspectorate*".<sup>2</sup> This designation serves as the basis of all types of inspection in our country because this law has followed a number of inspectors, but the State Inspectorate for Environment and Forests, created for the first time with DCM no. 46, dated 29.1.2014, is the main one in the field of environmental crime. An important role in this type of activity should also play the State Health Inspectorate, established by DCM no. 241, dated March 27, 2013, but since the environmental monitoring does not have a major part of its activity, the role of this inspectorate in the fight against the subjects that intentionally or unintentionally harm the environment is almost inexistent.

The purpose of their creation is the same, while they differ from each other from the scope of inspection and the manner of their organization and functioning.

Environmental crime is within the scope of state responsibility of the State Inspectorate of Environment and Forests. The legal basis for regulating its activity is the framework law "On Inspection in the Republic of Albania" and their sectoral laws. The common law for all is also the Law "On administrative contraventions", since the inspection, in case it contracts the commission of administrative offense, has the right and the obligation to take administrative measures referred to the aforementioned law and sectorial legislation of inspectorate who carried out the inspection .

However, under the law, the purpose of the inspection is to protect the public interest and the legitimate interests of natural and legal persons. The realization of this goal is achieved through:

- a) assessment of compliance with legal requirements by the subject of the inspection;
- b) documentation of good practices in respect of legal requirements and their dissemination;
- c) advising the inspected subject for the correct application of the legal requirements;
- ç) ordering the correction of violations of legal requirements and eliminating the consequences deriving from them;
- d) the issuance of penalties and the taking of other administrative measures to avoid the risks that may be caused to the public interest and the legitimate interests of natural and legal persons provided for by this law or special legislation.<sup>3</sup>

The inspection process is based on several principles which are the preamble of any inspection, referred to the law "On Inspection in the Republic of Albania" they are:

**Principle of independence of inspection**, which means that the inspector or inspection team, within the competencies given by law or sub-legal act, is completely independent in carrying out the inspection proceeding and making decisions for a specific case. Under these circumstances, the inspector or inspection team should not be influenced by the political or private interest of his superiors, but be guided solely by law enforcement, the sense of duty and above all from the control program when he considers it regardless of who has drafted or approved it. If you consider the control program illegal, ie if it has been drafted and approved by an institution other than the one that the inspector is part of, or is in overcoming rights granted by the law to inspect, etc., the inspector or group the control has all the legal rights to refuse its implementation, as only thus will we have the full realization of the principle of impartiality of inspection.

The principle of proportionality in the inspection activity means that during the inspection, the inspector performs the inspection activities in such a way as to interfere with the activity of the inspection subject only to the extent necessary and appropriate for achieving the purpose of the inspection, so it can not and should not affect the performance of the inspector's work, except in cases where, as mentioned above, the breach committed by the inspector is such that it is necessary to take such measures that go until the suspension, or complete closure of the activity. This principle also implies that the inspector or the inspection team in determining the sentence or measure to be taken, in accordance with the importance of the violations found or their consequences, shall impose such sanction or take the measure necessary and appropriate to achieve

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<sup>2</sup> Law "On Inspection in the Republic of Albania".

<sup>3</sup> *Idem*.

the purpose of punishment or measure and which infringes less the rights or legitimate interests of the subject of the inspection. Also, the inspector or inspection team, in determining a deadline that it will set in order to correct the violations found and eliminate their consequences from the subject of the inspection, is obliged to consider the importance of the violation, its consequences and circumstances concrete measures that determine the time needed to carry out the actions for this purpose, with maximum effort by the inspection subject.

**The principle of programming the inspections means** that a subject can be inspected only in accordance with the inspection program. Exceptionally, a subject may be inspected outside the program in cases expressly provided by law. The inspection program has some elements that are mandatory to be drafted by its compilers, which means that the inspection program should at least have the date or time period when the inspection is to be carried out, the subject or group of subjects to be inspected, their place and address, the object of activity, other data on the subject, the object of control, the group of persons who will perform the inspection, the time when the report of inspection, approval of the inspection program will be clarified.

**The principle of the most favorable legal provision** implies that in cases where the legal provisions under which the inspection operates are unclear or contradictory, the inspector acts in a manner that is less restrictive to the subject of the inspection. The same reasoning applies even when the subject of the inspection has acted in accordance with a legal requirement that contradicts another legal requirement, its action will not be considered in violation of the law. But this principle does not apply in cases of assessment of the punishment measure, where the inspection team in determining this measure will be supported by the gravity of the violation and the consequences that might result from this violation. To illustrate this fact, we will cite cases of imposing fines on subjects that operate without being granted environmental permits. Referring to the Law "On Environmental Protection", the value of fines for these subjects is 1.000.000 to 2.000.000 lek. In any case, it is the right of the inspector to impose the fine value at this interval, in numeric value, the fine ceiling is double its floor. The inspector's discipline in this case should be related precisely to the type of activity of the subject, as a cement plant has the greatest potential to harm the environment than a bakery. Under these conditions, the bread baker may punish it with the minimum fine value, while it is imperative that the cement plant be punished with its maximum weight because its impact on the environment is much heavier than that of the baker.

**The principle of public information and the protection of confidentiality** means that every inspectorate during its work is obliged to inform the public of the findings and measures taken during the administrative inspection proceeding if this is necessary for the protection of the rights and interests of natural and legal persons, but this information should be made on the basis and within the limits of the law on the protection of personal data and data related to the commercial or professional activity of the inspection entity or other persons. In this context, it is necessary that, during the inspection, facts and circumstances that affect the life, health, or private interest of one's life are to be disclosed to persons who are affected or may be affected by such acts or omissions. For example, if it is found that an installation has carried out chemical scraping in its sewage pipes, it is necessary that besides the measures to be taken against this subject, the surrounding population should be informed about this fact after the use of water or their lands could be contaminated with these materials.

### **3. State Inspectorate of Environment and Forests**

The State Inspectorate of Environment and Forests operates on the basis of the legislation set forth in point 8.8 below and on the basis of the Decision of the Council of Ministers no. 46, dated 29.01.2014 "On the organization and functioning of the State Inspectorate of Environment, Forests and Water" as amended. This act has been drafted and approved following the implementation of the Reform Inspection, based on Law no. 10433, dated 16.06.2011 "On Inspection in the Republic of Albania".

The proposal and drafting is based entirely on the law in question, and in particular in the provisions of Articles 10, 11, 12, 13 of the Inspecting Law. At the same time it is based and paves the way for the changes that have been made in all applicable sectorial laws that relate and / or define the scope of this State Inspectorate of Environment, Forestry and Water.

The State Inspectorate of Environment and Water forests is subordinated to the Ministry of Environment (central institution) and extends its competence in the areas covered by the responsibility of the Ministry of Environment referred to the respective DCM "Determining the scope of state responsibility of the Ministry of Environment" which stipulates that "...The Ministry of Environment exercises its activity in these areas of state responsibility in accordance with the relevant legislation:

The environmental sector includes waste, air quality, noise, industrial pollution, chemicals, climate change and environmental monitoring, environmental impact assessment;

The biodiversity sector includes flora and fauna, soil protection from erosion and degradation, protection of natural landscapes and protected areas;

The water resources sector includes surface water, groundwater and seawater.

The forest and pasture sector includes the protection, management, rehabilitation of degraded and degraded forests, new forestations and forest cadastres; ... "<sup>4</sup>

Which means that outside this sphere of responsibility, the State Inspectorate of Environment and Forests has no kind of competence. For example, it can not inspect metering counters of electricity consumption, as CEZ and ERE do this type of inspection, but can inspect all entities that have been granted environmental permits for the development of a certain activity.

Generally, an inspector or inspector can not be part of two types of inspections or inspections by two different institutions as the possibility of conflict of interest may arise during the exercise of his functions, and as mentioned above, it depends on the area of state responsibility that has been given. Referring to the law "On inspections in the Republic of Albania", exceptionally, a state inspectorate may be an integral part of another institution, depending on a ministry, if explicitly provided for by a special law. the only known case today is a case that is creating a lot of confusion in the pursuit of the INUK (National Urban Construction Inspectorate) duties.

For the State Inspectorate, we can say that it exercises its territorial jurisdiction throughout the territory of the country, since being dependent on a central institution (such as the ministry) as long as they extend the realization of their field of state responsibility in the entire territory of the republic, and the inspectorates as their subordinate institutions, of course, would have the same territorial coverage. This is the reason why so far all inspectorates are also organized in territorial branches, which are run by the respective branch manager.

#### 4. Forestry Inspectorate

This is a state structure subordinated to the Minister of Environment, Forests and Water Administration charged with controlling the implementation of the legal and regulatory framework of forests and pastures by all entities that own, administer or use forests and pastures and from the entities that carry out activities in the forestry and pasture fund, regardless of the form of ownership. The proposed institutional reform is based on the Forestry and Pasture Sector Development Strategy adopted by the DCM.

This reform aims to increase the efficiency of control structures and take the necessary measures to protect natural resources in order to improve and strengthen control over the law enforcement to eliminate and reduce.

**Tasks at the central level.** Drafting of sub-legal acts and improvement of existing ones regarding the protection of forests and pastures; Drafting of plans and programs of cooperation with the institutions and other central structures to control the implementation of legislation and activities in the country's forest and pasture fund; Control of implementation of forest and pasture

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<sup>4</sup> DCM "On defining the scope of responsibility of the Ministry of Environment".

legislation in dependency structures; Monitoring the implementation of strategies and policies for forest protection from damages, illegal activities and fires.

**Duties at regional level.** Drafting of action plans and programs for controlling the implementation of management plans and inventories throughout the forestry fund of the region, regardless of their status and form of ownership; Cooperation and coordination with state institutions, regional, local and various associations for the implementation of action plans and programs, in compliance with their legal obligations, for the control of the implementation of forestry and pasture management and inventory plans; Monitoring the realization of the action plans and programs, in the framework of the realization of the strategic objectives; Cooperation and coordination with the regional structures of other institutions, on the implementation of lawfulness in the activities carried out by various subjects in the state forestry and pasture fund; Collaboration and reconciliation of programs and measures with regional and local structures for extinguishing fires in state, municipal and private forests and pastures.

**Duties at the local level.** Monitoring and control of the implementation of management plans and inventory by the administrators, users and owners of forests and pastures; Economic and technical environmental assessment and approval of implementation projects for the execution of works in the forests and pastures of the district for all forms of ownership; Monitoring and control of production activities and works for the implementation of investment projects in state, municipal and private forests and pastures, by the police structures themselves and in cooperation with local state institutions and various associations; Cooperation with local authorities, associations and communities for the implementation of information and public awareness programs for the protection and development of forests and pastures; Proceeding and penalizing persons and entities that engage in illegal activities in the state, municipal and private forestry and pasture fund; Proceeding and penalizing state structures, private owners and users of forests and pastures for violations in the implementation of breeding plans, inventory and implementation projects; Judgment of administrative offenses for damage caused to state, municipal and private forests and pastures; Organizing and directing the actions of all local structures for extinguishing fires in state, municipal and private forests.

**Duties of environmental inspectorate.** Being part of the regional audit offices has these tasks. The Environmental Inspectorate conducts environmental and environmental control activities through environmental inspections. The Minister of Environment to increase the possibilities of the Inspectorate, consisting of inspection groups, authorizes in special cases specialists to participate in environmental inspections. Inspectors are provided with the identity card of the inspector, where the territory in which they exercise environmental control is defined. Environmental Inspection is an activity of the Inspectorate and is concerned with:

a) control of compliance of subjects controlled with the requirements of environmental legislation;

b) monitoring the environmental impact of controlled entities to determine the measures to be taken for environmental protection.

Environmental Inspection is carried out through:

a) inspection groups, consisting of not less than two inspectors;

b) Inspection teams, established in cooperation with other inspectorates;

c) controls performed by the sole inspectorate.

Environmental Inspection aims at: implementation of environmental legislation in the control area; the compliance of the activity inspected with the legal requirements and the environmental permit conditions; implementation of the requirements set in the previous inspection.

Environmental Inspection includes:

a) the environmental control and assessment of the areas where the subjects to be controlled are located;

b) monitoring compliance with environmental quality standards by polluting activities;

c) evaluation of the reports and statements of subjects subject to control;

ç) assessment and verification of any self-monitoring of subjects subject to control;

- d) evaluation of the activities and functions performed by the subject subject to control;
- e) control of facilities, equipment and suitability of environmental management carried out by the entity itself;
- f) control of the data held by the operators of the subjects subject to control.

Environmental inspections are planned in advance and carried out on the basis of an approved plan. The environmental inspections plans are approved by the Minister of Environment. Inspection plans are drafted in support of cooperation programs with other industry branch inspectorates, geographic distribution of activities, provided with environmental permits or the degree of pollution that represents each activity.

Inspection plans are drafted at national and regional level. Circuit-level plans are part of the national plan.

The inspection team and the inspectors have the legal right to enter the places where they will be controlled and to obtain data for environmental inspection purposes.

During the control instead of the activities, the inspection team is obliged to:

- a) examine to a large extent the negative impacts, in accordance with the requirements of environmental legislation and environmental plans and programs;
- b) to help expand the knowledge and awareness of subjects about legal requirements, the environmental sensitivity of the state, and the negative impacts of their activities;
- c) to consider the dangers and impacts of the installed installation environment for assessing the effectiveness of the authorization, permit or licensing requirements and to assess whether improvements or changes are required under these requirements.

After each environmental inspection, the inspection team draws up the report of the inspection results, which reflects:

- a) inspection data and evidence of compliance of the activity with the requirements of environmental legislation;
- b) assessments and conclusions on the sanctions to be taken.

The Inspectorate of Environment during the inspection of the subjects keeps a record in the presence of the representatives of the subject being controlled.

Full reports or conclusions are officially communicated to the audited entity no later than 10 days after the completion of the inspection.

As mentioned above, but also referring to the legislation in force for inspection, the state inspectorate competent for carrying out an inspection function provided for by special law is established or determined by a decision of the Council of Ministers. This was the procedure of establishing the State Inspectorate of Environment and Forests, which was drafted by the Ministry of Environment in November 2013, officially forwarded to the opinion in line ministries and the Department of Public Administration and after reflection of the opinions of all institutions, was submitted for consideration and approval to the Council of Ministers in December 2013. The Council of Ministers, after reviewing and verifying the comments made by other institutions, approved it on 29 January 2014, the date on which the Council Decision Ministers "On the organization and functioning of the State Inspectorate of Environment, Forests and Water".

The Chief Inspector of the State Inspectorate is in the center and heads its regional branches through the chief of the regional branch. Referring to the territorial administrative division of the Republic of Albania, which divides the territory of our country into 12 counties, it is reasonable to have branches at the district level.

The Chief Inspector and the Head of the Subordinate Body, presumed to be the Chief Inspector of the Regional Branch, is appointed and dismissed by the Prime Minister upon the proposal of the Minister in charge.

The organization of ministerial inspections does not function based on the principle of uniformity, it is possible to distinguish five different typologies of organization in carrying out the inspection functions:

- Inspection Institutions with legal personality (other than that of the parent ministry) that consist of a central office (with jurisdiction throughout the country) and do not have

branches or directors in the territory (Tobacco Cigarette Agency, National Center for Drug Control ( NCDC), etc.);

- Inspection institutions with legal personality (other than that of the parent ministry) that consist of a central office and have their territorial branches (National Food Authority);
- Inspection institutions with legal personality, whose headquarters are part of the ministry's structure (usually organized in directorates or one-function units with a coordinating role and methodological guidance), but having their own branches in the territory of which report directly to the central office (State Labor Inspectorate);
- Inspection institutions with legal personality (other than that of the parent ministry), which consist of the central office, while the inspection in the territory is carried out by the inspection units at the regional branches of the ministry and also exercise other functions (Seed and Sapling Inspection);
- Inspection Institutions without legal personality that are part of the ministry's structures, the head office is organized as a multifunctional director within the ministry apparatus while the inspection in the territory is carried out by inspection units part of the ministry's Regional Branches / Departments (which also perform other functions included here other inspection functions) (Veterinary Inspectorate, Zootechnik, Phytosanitary Inspectorate, etc.).

## 5. Conclusion

In this context, when conducting an inspection in the field of environment, the authority authorized by law to carry out this type of inspection is obliged to implement the applicable legislation for the inspection except the environmental one. In this respect, compliance with the law begins with the drafting of the inspection program, its implementation, the correct manner of its implementation, the way of communicating the control program, the receipt of documentation or information related to the controlled, suggestions for improving the situation and documentation, accurate and correct drafting of the act of control, the record of finding the violation and the decision of the damage in case the violation found is punishable.

The issues that have been identified to date are, first and foremost, the seriousness that must be addressed in each case the importance of having a healthy environment, as this affects the whole society, but this is not yet easy to achieve by that the Albanian society has just begun to seek living standards.

Sorry when you go out in the common premises outside your door of the apartment and continue to see trash bags or someone else irresponsible in the concept of community obligations, left them there. In this context, it is not surprising that the inspectors or those involved in the field of inspection of the environmental elements are completely unaccountable. Often times, even senior environmental institutions leaders have not been accountable in their decision-making, precisely because of the lack of this culture. So far, the environment and its problems have been treated as "issues / problems of others", things that are not directly related to us. Only our home, our car, our children or our office is our problem. But in no case should this be so, that we forget that our home, our car, our children or our office are within the environmental area we are talking about and is the property and obligation of everyone's maintenance.

The lack of this culture, but not only, even thinking in this context, causes a very limited amount of inspections to date to have really had the necessary influence in finding, prosecuting and bringing to justice the environmental pests.

## Bibliography

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